December 17, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: ***Ex Parte***
CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

In this letter, El Paso Networks, LLC ("El Paso") provides further information for the Commission's consideration in the above-captioned proceeding concerning unbundled access to DS-1 loops, including the Attached Declaration of Javier Galindo that explains in detail the routine loop conditioning and rearrangement activities ILECs employ to provision DS1 services to their own customers.

El Paso and other CLECs have provided the Commission extensive information describing Verizon's, and recently SBC's, practice of denying unbundled access to DS-1 loops based on "no facilities."[1] As explained in these submissions, these "no facilities" policies are based on an erroneous reading of the Eighth Circuit's decision regarding the Commission's "superior network" rules.[2] Specifically, requiring ILECs to perform modifications to their existing networks to fill CLEC orders (such as adding line cards, multiplexers, and other electronics) is not inconsistent with the Eighth Circuit's holding that Section 251(c)(3) does not require ILECs to provide access to a "yet unbuilt superior [network]."[3] CLECs are not requesting ILECs to build an as yet "unbuilt superior network," but instead request that ILECs undertake the placement, augmentation, modification and replacement of facilities that the ILECs provide to their own special access, DS-1, DS-3, OCn and other customers, and which is routine in the existing ILEC networks. Further, El Paso and others have fully explained that the

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1 *See* Comments of ALTS, El Paso *et al.* CC Docket No. 01-338, filed April 5, 2002; Reply Comments of ALTS, El Paso et al, CC Docket No. 01-338, filed July 17, 2002; Letter from Cbeyond Communications to Marlene H. Dortch, CC Docket No. 01-338, filed November 23, 2002.

2 Comments of ALTS, El Paso *et al.* CC Docket No. 01-338, filed April 5, 2002 at 107-109

3 *Iowa Utilities Board v. AT&T*, 120 F. 3d 753 (8th Cir. 1997), *appealed on other grounds*, 119 S. Ct. 721 (1999).

nondiscrimination obligation of Section 251(c)(3) provides the Commission ample authority to proscribe these "no facilities" policies.

A number of specific suggestions have also been submitted by CLECs for implementing a proscription of ILECs' unlawful "no facilities" policies. El Paso supports the recent proposal of NewSouth Communications.[4] Other proposals could also provide a basis for addressing this issue.[5] El Paso however has one additional suggestion to the language offered by NewSouth. El Paso would urge that the Commission's rule recognize that rearranging and repairing cable is a matter of routine practice when an ILEC provisions DS1 services it its own customers. EPN would modify the NewSouth rule to read as follows, with El Paso's change highlighted in bold text:

> An incumbent LEC shall provide access to unbundled network elements to the extent that such network element is available. For purposes of this section, an unbundled network element shall be deemed available if located in an area served by the incumbent LEC at the time that the requesting carrier requests unbundled access.
>
> (i) A network element shall be deemed available in all situations where the incumbent LEC must add equipment, to the extent such equipment is customarily employed by the incumbent LEC, or undertake modifications to its network, necessary to provide access the network element requested. Such equipment or modifications shall include, but not be limited to, racks, apparatus cases, multiplexers, line cards, tie cables, repeaters, doublers, regenerators, range extenders, network interface devices such as smart jacks or chassis, **rearrangement, splicing, or repair of copper or fiber cable,** or the installation of a drop, whether such equipment is located at a central office, wire center, remote terminal or customer premises.
>
> (ii) An incumbent LEC shall make modifications to its network necessary to provide access to unbundled network elements, including the features, functions and capabilities of such elements, to the same extent that the incumbent LEC would undertake such modification, without additional charge, in order to provide service to its wholesale or retail customer.
>
> (iii) An incumbent LEC shall not be required to extend its network to points outside of its service area in order to provide access to a requested unbundled network element.

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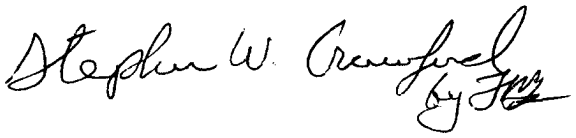
[4] *See* Letter from Jake E. Jennings, NewSouth Communications to Christopher Libertelli, CC Docket No. 01-338, filed November 6, 2002.

[5] *See* Letter from XO Communications, Inc., CC Docket No. 01-338, filed November 21 , 2002; Letter from Allegiance Telecom, Inc., CC Docket No. 01-338 filed September 30, 2002.

In support of this proposed rule, EPN attaches the Declaration of Javier Galindo who joined El Paso after 27 years of experience with SBC and who is intimately familiar with the processes SBC and other ILECs employ for provision DS1 loops to their own customers. El Paso again urges the Commission to promptly address and proscribe Verizon's and SBC's "no facilities" practices and policies by these or other possible approaches.

Sincerely,



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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

DECLARATION OF JAVIER GALINDO

The undersigned, being duly sworn on oath, does say and depose as follows:

1. My name is Javier Galindo. I am a Manager in the Metro Fiber Procurement group of El Paso Global Networks ("El Paso").

2. El Paso is a combined facilities-based and UNE purchasing CLEC that provides high-speed telecommunications transport services to telecommunications carriers and high-volume enterprise business users. To serve the needs of these customers, El Paso has deployed a state of the art transport network in five cities in Texas: Austin, San Antonio, Dallas, Houston and Fort Worth. El Paso has now completed its transport network, has collocated in most of SWBT's central offices in each of these five cities, and has connected these offices using dark fiber obtained from SWBT. El Paso is now focused on attracting customers to its transport network. To reach these customers in a cost-effective manner, El Paso must have access to UNEs between El Paso's collocation arrangements in SWBT central offices and the customer's premises. Thus, for El Paso to stay in business, unfettered access to SBC UNE loops are of the utmost importance.

3. The purpose of my declaration is to describe the routine types of provisioning, maintenance, and repair activities that Verizon, SBC, BellSouth, and Qwest make to their networks in the ordinary course of business when turning up, operating, and repairing DS-1 and DS-3 and other high capacity loops for their own customers.

4. My statements also, in part, respond to the October 18, 2002, *ex parte* letter that W. Scott Randolph, Director of Regulatory Affairs, Verizon submitted in this proceeding (hereinafter the "Verizon Letter") in which Verizon describes activities that it believes it is not required to perform, under its "no facilities" policy, when a CLEC requests Verizon provide a DS-1 or DS-3 UNE loop under Section 251(c)(3) of the Act. I have read this letter and comment on it below.

I. My Background

5. I have over 28 years of telecommunications experience that includes 27 years with SBC's ILEC affiliate Southwestern Bell Telephone Company and the past one and one-half years with El Paso. For my first eight years with SBC, I worked in Outside Plant ("OSP") Design Engineering responsible for distribution facilities, feeder relief and fiber placement, including particularly DS-3/OC-3 provisioning to SBC remote sites. From 1984 to 1992, I worked in network planning, as a manager responsible for long range planning of both fiber and copper facilities in SBC's outside plant. From 1992 to 1995, I returned to OSP Design Engineering, where I worked with SONET Transport Equipment in the Houston Area.

6. From 1995 to 1999, I served in SBC's Network Sales Support section, where I supported SBC's sales personnel in planning private, fiber-based networks for large business customers. In this context, I was involved in managing CLEC collocation requests and acquired considerable experience with SBC's ordering and provisioning processes, including LSR, ASR, FOC, and so forth.

7. Subsequently, from 1999 to 2000, I was as a Manager/Data Engineer, responsible for planning and deployment of ATM switches for frame relay, cell relay, and DSL networks. In my last position with SBC, I served as a Project Manager in Data Services. I retired from SBC in November of 2000. After briefly working for TXU Communications in provisioning management in the North Houston area, I assumed my present position at El Paso.

II. Description of Routine Provisioning, Operation and Repair Activities of SBC and Other ILECs

8. My substantial 27 years of experience at SBC in provisioning DS-1, DS-3 and other high capacity loops enables me to provide an accurate general overview of the types of routine activities -- including provisioning, operation, and repair of such loops -- that occurred at SBC when the company provided high capacity services to its customers. Although there may be slight variations on how each individual ILEC handles each of these activities, based on my knowledge of the industry and other ILECs' operations, other ILECs deal with such activities in a similar manner as SBC.

9. It is evident from El Paso's experience ordering DS1 UNE loops from SBC in Texas that ILECs can and should make routine modifications to its network to accommodate CLEC requests for UNEs. For example, between April 1, 2002 and October 1, 2002, El Paso submitted one thousand one hundred and nine (1,109) orders to SBC (SWBT) in Texas for DS1 UNE loops. *In all cases the DS1 order was provisioned.* The only exception to this is in a few instances when the customer canceled the order or the customer premise was not ready for the DS1 UNE loop to be installed.

10. El Paso's data further demonstrates that in forty nine (49) cases, SBC originally reported "no existing facilities", which typically may include but are not limited to, lack of cable pairs,

lack of repeater shelves, installation of new repeater bays, installation of field repeaters (repeaters in the loop plant that are placed in apparatus cases in manholes or telephone poles), reconfiguration of multiplexing equipment or the installation of additional multiplexing equipment, or existing conditioned pairs. Importantly, however, SBC provisioned each of these UNE orders and performed whatever activity was necessary to deliver the UNE. Of course SBC provided the UNE to El Paso at a later date than the original due date. In these cases, SWBT provisioned the circuits after conditioning the existing SWBT existing network to alleviate the cause of the original report of lack of facilities. *Again, in every case, the DS1 UNE loop was delivered to El Paso.*

11. The reason that SBC had to condition its network to fulfill El Paso's orders and that its outside plant technicians must perform these same functions on a daily basis lies in the manner in which SBC and other ILECs deploy their networks. SBC and other ILECs deploy their networks based on forecasted needs. Using these forecasts, the ILEC will deploy sufficient network facilities to serve short term and long term forecasts. However, it is extremely important to note that the demand for DS-1 and other high capacity loops cannot be forecasted with total accuracy, and that there will not always be existing facilities available at any time and location to serve an ILECs' customers. In addition, when facilities are deployed based on forecast the ILEC deploys them in a manner that preserves flexibility allowing the ILEC to provide service not explicitly included in the forecasts and further recognizes that customer forecasts frequently change. Therefore, SBC and other ILECs realize that as a normal part of doing business, they have to employ "Just in Time" engineering and provisioning. By just in time engineering I mean they deploy facilities but do not connect all the pieces unless there is a customer specific request for

service. But because the facilities are already in place, it is (and is designed to be) a matter of routine conditioning to provision service over those facilities when a customer requests service in the future.

12. Using this engineering principle (which El Paso does not disagree with) the ILECs understand that certain loop conditioning, modification of facilities, or repairs (as discussed below) may be required in order to provision such high capacity loops to their own customers. Importantly, just because a CLEC requests a high capacity loop, rather than an ILECs' customer, such routine business activities do not suddenly become extraordinary construction activities that the ILECs would not otherwise perform as part of their day-to-day operations.

13. In general, ILECs who provision DS-1 or DS-3 UNE loops to provide services to their own customers, as part of their ordinary course of business, first determine whether facilities and equipment are currently configured to provision the order, and if they are not, then a group within the company responsible for plant -- *i.e.,* OSP -- is assigned to take on whatever routine modifications to facilities are required to complete the UNE loop order. These routine activities generally include: (1) rearranging cable to connect the customer to the ILEC central office; *i.e.* when there is a defective cable pair from the customer premise to the Central office the OSP group has a way to rearrange the facilities, including splicing of existing facilities, to use a different pair of copper cables to provision the service to the customers; (2) conditioning of the loop (this may involve installing doublers, in instances where ILEC employs HDSL technology and the loop is over 12,000 feet in distance from the originating ILEC central office or installing repeaters for the oldest and most embedded method the traditional T1C or T1D type of DS1 provisioning which utilizes 4-wire copper facilities and requires a repeater to be installed at approximately three thousand feet intervals in the loop plant.) These activities are no different

than removing load coils and bridge taps, rearranging of existing copper or fiber facilities,[1] and activating/splicing additional copper pairs into an existing customer location, as required when the ILEC is providing a loop capable of supporting xDSL; (3) installing HDSL Terminal Units at both the central office and a customer's premises; (4) repairing existing cabling when that cabling is not functioning and (5) in buildings where riser or drop cables do not reach the customer's premises, installing such cables. The activities are not unique to situations where a CLEC requests that an ILEC provision a DS-1 UNE loop to serve the CLECs' customer, and are nothing other than routine, ordinary activities that ILECs undertake on a daily basis to serve their very own customers.

14. Verizon, in its October 18th, 2002 filing describes rearranging of facilities as "construction." The act of rearranging existing copper cable should not be considered a construction activity. It is something that ILECs do on a routine and daily basis as part of the provisioning process for providing service to its own customers. As a matter of a fact, conditioning a loop to provide xDSL is rearranging the cable. When an ILEC outside plant technician conditions a copper loop for xDSL by removing bridged tap and Load Coils in the loop, the work is generally performed by the same staff that performs rearrangement for DS1 services.

15. In cases where ILECs provision a DS-1 or DS-3 UNE loop for a customer, and that loop is provided over a fiber optic facility, the following steps are part of their routine, ordinary activities which may be required. First, multiplexer capacity may need to be expanded or new

[1] Verizon stated that rearranging of existing copper facilities is a construction activity. Verizon Letter at 3. I disagree. During my tenure at SBC, such rearrangement of copper facilities was considered an everyday requirement and does not involve construction. Rearranging of cables is sometimes referred to as a "cable throw."

multiplexers installed at the customer and/or central office locations if additional capacity is needed (although ILECs also separately upgrade facilities, such as multiplexers, based on anticipated future customer demand).[2] Second, in contrast to Verizon's comments,[3] the installation of additional line cards in existing multiplexers is part of the normal everyday provisioning process. As an example, in SBC's "Interim DS-1 UNE Loop Procedures" for SBC's SWBT territory, SBC specifically listed placing line cards as a function its outside plant forces were required to perform when fulfilling CLEC orders for DS-1 UNE loops.[4] Also, as part of its ongoing operations, SBC manages line card deployment at both its central offices and customer locations and adds line cards, as necessary, to service its ongoing customers' needs.

16. The provisioning of such high capacity DS-1 and DS-3 UNE loops also typically requires that ILECs access facilities underground (via manholes and vaults) and in aerial plant to install equipment, splice fibers, terminate fiber in splice trays at the customer's location and at the central office, and once the fiber is installed, test the fiber to confirm the loop is operational. ILECs frequently need to expand manholes and other structures in order to install additional equipment and do so on a regular basis in connection with the daily operation of the network.

17. The activities described above are done as part of SBC's and other ILECs' routine operations in serving their own customers as part of operation, maintenance, and repair of network facilities. Based on my extensive operational experience working for an ILEC, I do not

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[2] In an post-interconnection dispute resolution proceeding in Texas, SBC testified that "Rarely if ever will you find a customer premises multiplexer 100% full. In fact, if the customer's multiplexer ever reaches, for example, 85% of full capacity, Southwestern Bell places a new multiplexer." Complaint of Waller Creek Communications for Post Interconnection Dispute Resolution with Southwestern Bell Telephone Company, Docket 20268, Direct Testimony of Mark Schilling, January 19, 2001 at p. 13.

[3] Verizon Letter at 7.

[4] Letter from J. Strow, Cbeyond Communications to Marlene Dortch, FCC, November ___, 2002, Exhibit __, at p. 2 ("3. We will continue to add a circuit card to an existing multiplexer, plugs to existing repeater case, and/or cards to an existing pair gain system to provide the service.")

consider any of these activities to be extraordinary or unusual and certainly do not result in provision to CLECs of a superior network. Quite the contrary, these activities merely make it possible for the ILEC to provision to CLECs service on a par to what the ILEC provides to itself and its own customers.

18. Further, there are frequently times when SBC will, after conditioning the loop and testing the loop, determine that there are problems with the copper (or fiber) cabling that prevent the provisioning of service. When installing DS1 circuits for their own customers SBC routinely dispatches its Installation, Maintenance, and Repair crew to test and repair the copper or fiber cable prior to turning up service. SBC, however, in its "Interim DS1 UNE Procedures" for the SWBT states will not repair cables that are in place but not functioning.

19. It is also normal for SBC and other ILECs to place a drop wire to the customer's location, when delivering service to a residential home or other premises where the ILEC has not previously placed a copper or fiber cable to serve a customer. This is a normal everyday procedure and this is not considered a construction procedure.

20. I declare that the foregoing is true and correct to the best of my knowledge.

Executed this 16 day of December 2002.

Signature
Javier Galindo
El Paso Global Networks